

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY  
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU  
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,  
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"  
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING  
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE  
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO  
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE  
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR  
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND  
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE  
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED  
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED  
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT  
19 SHOULD BE USED WITH GREAT CARE.

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1 GABRIELINO-TONGVA TRIBE VS. STEIN

2 TRIAL TESTIMONY OF J. STEIN

3 10:17 AM.

4 THE COURT: Gabrielino versus Stein, BC361307 good  
5 morning.

6 MS. IBARRA: Good morning.

7 MR. FORDYCE: Good morning.

8 THE COURT: Counsel make your appearances.

9 MS. IBARRA: Delia Ibarra on behalf of plaintiff  
10 Gabrielino-Tongva Tribe.

11 MR. FORDYCE: Niall Fordyce on behalf of Mr. Stein  
12 and law offices of Jonathan Stein.

13 MR. STEIN: Jonathan Stein on behalf of SMDC and  
14 the Crane Group.

15 THE COURT: Thank you. You know I was thinking  
16 about our motion and I was thinking about this 402 concept  
17 and I said why am I going to have a 402, I don't have a  
18 jury so -- and the reason you have a 402 is because you  
19 don't want to prejudice the jury by having them hear  
20 evidence that will ultimately be in the trial but we're in  
21 the court trial so I think the way to do it would be to  
22 allow the Defendant to just put on whatever evidence he  
23 has, foundation, and if he gets in, then it gets in, if  
24 it's refused then it's just excluded rather than -- because  
25 the 402 really judge just going to bring these witnesses  
26 twice, we have a 402 hearing?

27 A. Exactly right.

28 THE COURT: And we have them again for a court

1 trial, it's not necessary, we're in a court trial, I'm the  
2 inventory so we don't need to do that so that would be my  
3 inclination.

4 MS. IBARRA: So does that mean that the court is  
5 going to issue a ruling after the foundational phase.

6 THE COURT: That's right so they have to put in a  
7 full foundation, if I say no it's gone, they have a record,  
8 just like they would with a 402 hearing but there really  
9 isn't a need for a 402 we're not keeping it from the jury,  
10 so -- go ahead, you wanted to say something Mr. Stein?

11 A. Yeah buff I didn't want to speak out of turn. I  
12 think the court is exactly right because we had planned to  
13 do is have a very simple declaration from Barbara Garcia  
14 maybe two pages saying this is the foundational points that  
15 I would make about it, same thing with Steven Johnson, he  
16 actually had his testimony so we would probably quote his  
17 testimony and put it right into the declaration about it as  
18 well and then and the question is whether the  
19 substantive -- those declarations would include substantive  
20 stuff, we'll share the declaration with opposing counsel to  
21 the extent that she wants to take the time to do it and to  
22 avoid if possible live testimony but she obviously has the  
23 right to cross-examination them on the declaration, I'm  
24 hoping that Marilyn Barrett can go the same way.

25 THE COURT: So the proposal is for the  
26 declarations for I guess their direct and then if you want  
27 to cross which I don't know but if you do then they'll be  
28 here to cross.

1 MS. IBARRA: Okay. So --.

2 THE COURT: But that would be --.

3 MS. IBARRA: Because a long time -- not a long  
4 time ago but a couple weeks ago the court suggested we do  
5 the remaining witnesses by declaration.

6 THE COURT: Right.

7 MS. IBARRA: We all agreed about that but then  
8 there seemed to be this idea that we should just bring in.

9 THE COURT: Right but this is his suggestion for a  
10 these particular wets we don't have to it that way it's a  
11 suggestion, if they're going to be here anyway I'm not sure  
12 why you wouldn't want to do a direct but they're short.

13 MS. IBARRA: Yeah?

14 MR. STEIN: As I said I'm hoping we write such a  
15 benign declaration that opposing counsel might look at it  
16 early in draft form and say if you'll add this sentence I'm  
17 okay with it or if you'll take out that sentence I'm okay  
18 with it.

19 MS. IBARRA: Well I --?

20 MR. STEIN: And that may we might just have a  
21 stipulation to factor a declaration agreed to.

22 MS. IBARRA: Well I'm not going to change the  
23 facts, you know I just need to elicit facts from them. So  
24 I could imagine getting the declarations and then wanting  
25 to have them come in so we can do cross about other facts  
26 that are not mentioned in there?

27 MR. STEIN: That would save time.

28 MS. IBARRA: That's fine?

1 MR. STEIN: That would save time I would have  
2 redirect if I had to.

3 THE COURT: Okay so that's -- I mean I'm fine with  
4 that.

5 MS. IBARRA: I'm fine with that.

6 THE COURT: Because we've had some of these people  
7 like Barbara Garcia is one.

8 MS. IBARRA: Like three times.

9 THE COURT: She's been here a number of times.

10 MR. FORDYCE: That's right Your Honor.

11 THE COURT: We can probably keep her from coming  
12 back how many times again. I don't know maybe we can just  
13 go that way and let them submit the declarations, take a  
14 look at it and if you decide if you want to cross, I'm not  
15 saying you can't, I'm just saying let them know and they'll  
16 bring her in but it sounds like maybe it will be a little  
17 shorter.

18 MS. IBARRA: Yeah it's more streamlined.

19 THE COURT: Less inconvenience for those who have  
20 been here a few times?

21 A. And the hopes were if Marilyn Barrett were handled  
22 the same way, obviously it's up to counsel whether she  
23 wanted to share her draft declaration or not but I would  
24 assume if I could just put a sentence in or take a sentence  
25 out that would be sufficient to avoid the  
26 cross-examination.

27 THE COURT: Well that's her -- she has the ability  
28 to have decide whether she wants to put Marilyn Barrett on

1 live in direct or put in the declaration, right, you're  
2 calling her.

3 MS. IBARRA: Yes but I haven't had a chance to  
4 call her since yesterday when -- previously she agreed to  
5 do a declaration, she previously agreed to come in, so it  
6 seems to me that she's open to either but I need to check  
7 with her about her schedule, and what she wants to do.

8 THE COURT: So let's keep Marilyn Barrett out of  
9 it because there's still some open questions on here but I  
10 say go ahead and file whatever declarations you want to  
11 file for the quantum meruit phase including the -- are you  
12 going to present all of the quantum meruit testimony or  
13 you're just doing the foundational part.

14 MR. FORDYCE: And Your Honor this is --.

15 THE COURT: By declaration.

16 MR. FORDYCE: And this is Mr. Stein because he's  
17 representing SMDC, but I do want to clear up with we are  
18 procedurally so you go head and answer Jonathan by I'm not  
19 sure what we're doing in terms of what we've briefed.

20 MR. STEIN: Again Your Honor, in the brief, we had  
21 to find the MSJ that these exhibits were attached to and we  
22 may submit a two-page supplemental brief showing that --

23 THE COURT: Okay.

24 MR. STEIN: -- once for all shades and for all  
25 purposes, which I believe is the law but I don't want to go  
26 back and see that.

27 THE COURT: Yeah I know you can use a declaration  
28 filed in an MSJ to impeach somebody, in other words

1 approximate somebody gets up and says something different  
2 in their declaration you can impeach, I'm not sure you can  
3 use that for this is decided against them so here just put  
4 in the declaration and that fact has already been  
5 determined.

6 MR. STEIN: That's not the point.

7 THE COURT: That's not when you were trying to  
8 argue.

9 MR. STEIN: No. Again we have a heavily redacted  
10 document that the core has raised concerns about.

11 THE COURT: Right.

12 MR. STEIN: That same heavy redacted document was  
13 put into evidence without objection for a motion for  
14 summary judgment, I believe it's statute, in other words  
15 under the MSJ statute, the way I've always handled MSJ's is  
16 they're very dangerous, not because you might use them  
17 sometimes they're laughable, they're dangerous because  
18 you've got to make sure every exhibit is trial ready and if  
19 they put in an exhibit that's not ready for trial you have  
20 to state your objection right then and there, that was part  
21 of the motion for summary judgment procedure to make sure  
22 trials are streamlined so that once you've spend all your  
23 evidence tore summary judgment on the part of the court  
24 that at least that body of the evidence which is often the  
25 center of the case, that body of evidence is ready for  
26 trial.

27 THE COURT: Yeah I haven't heard that before  
28 but -- did you win the summary judgment motion no, right.

1 MR. FORDYCE: But it has to be admissible evidence  
2 for 437(c).

3 THE COURT: Obviously it has to be admissible.

4 MR. FORDYCE: Yeah but that's a different --.

5 THE COURT: It's a different proceeding.

6 MR. STEIN: Once again if you had a -- I'd like to  
7 at least point out the provision.

8 THE COURT: Yeah if you can read it.

9 MR. STEIN: No no in, if you have the code book I  
10 can just simply read it right now and point to the court so  
11 you can earmark it.

12 THE COURT: Well it's 437.

13 MS. IBARRA: It's not like -- we didn't proffer  
14 this document in the motion for summary judgment and  
15 neither did Mr. Polanco it was Mr. Stein, we weren't a  
16 party to that summary judgment so we weren't --.

17 THE COURT: I understand.

18 MR. STEIN: Doesn't matter, doesn't matter.

19 MR. FORDYCE: I don't think that's procedurally  
20 correct.

21 THE COURT: You can just have it I guess if you  
22 find the section that you want to look at and tell us what  
23 it is so Plaintiffs counsel can tab it.

24 MR. STEIN: And again once I don't think we're  
25 urging the court heavily we're just pointing out what might  
26 short circuit a lot of work.

27 MR. FORDYCE: So in terms of briefing that far we  
28 submitted both -- or Mr. -- SMDC submitted and Plaintiffs

1 responded to, where are we with that? Are we going to have  
2 a hearing on that? I'm just not quite sure where we are.

3 THE COURT: Yeah let's -- sure.

4 MR. FORDYCE: Okay. I just want to be -- I just  
5 want to be clear.

6 MS. IBARRA: So we're going to have declarations  
7 from SMDC and then we're going to do a cross on those  
8 declarations probably, so it's just a matter of when the  
9 declarations get submitted and the schedule of the  
10 witnesses.

11 MR. STEIN: Your Honor Your Honor after you leave  
12 may I do this and hand it to Neli.

13 THE COURT: Yeah you don't have to.

14 MR. STEIN: I'll just put 437(c) for the moment  
15 and then I'll fill in exactly what it is and hand it back  
16 to Neli rather than use up all your time.

17 THE COURT: Right right.

18 MR. STEIN: May I --.

19 THE COURT: Just put it there.

20 MR. STEIN: (Indicating.).

21 THE COURT: You can take it with you after the  
22 hearing.

23 MR. STEIN: Very good.

24 THE COURT: Yeah the hearing is going to occur  
25 during the trial so whenever you're presenting.

26 MR. FORDYCE: Okay.

27 THE COURT: Your quantum meruit evidence through  
28 him, okay so when you're ready to do that.

1 MR. FORDYCE: Yeah.

2 THE COURT: Bring the declarations, she'll need  
3 time to look at it and prepare and then -- I don't know  
4 exactly when in his presentation you're going to do that  
5 but --.

6 MR. STEIN: Well I think --.

7 THE COURT: And then I'll decide whether it should  
8 be admitted or not.

9 MR. FORDYCE: Okay thank you Your Honor that  
10 actually -- that cleared it up, that's great, thank you,  
11 it's just on a Friday morning --.

12 THE COURT: No that's good.

13 MR. FORDYCE: So.

14 THE COURT: Soy guess you have to be prepared to  
15 do the hearing by laying foundation and then if I admit it  
16 then be prepared to put in whatever testimony had you need  
17 because it's admitted, it's in it's not admitted then  
18 you're just going to have skip that part.

19 MR. FORDYCE: Yeah.

20 MR. STEIN: So Your Honor what we'll do is we're  
21 on the rebuttal to 776 testimony, the cross-examination 776  
22 right now and so we're doing the attorney-client issue and  
23 that will take a little bit more time ask then she has her  
24 redirect. Next would be my testimony about all the topics  
25 covered by the other witnesses that I didn't have a chance  
26 to testify on, so it will be our rebuttal testimony to her  
27 case in chief so that would be the next segment after the  
28 attorney-client --.

1 THE COURT: When you -- so are you saying that in  
2 terms of timing you're zero going to address the quantum  
3 meruit last.

4 MR. STEIN: After.

5 THE COURT: After that, all right.

6 MR. STEIN: And then we would put on our case --  
7 then we would have our William mills and Mr. Margolis  
8 should finish the attorney-client and then we have the case  
9 in chief which is contract and quantum meruit. So it could  
10 very well be end of next week getting next or the  
11 following.

12 THE COURT: So quantum meruit you're saying in  
13 this part of the testimony is going to be not going to be  
14 addressed yet.

15 MR. STEIN: Right.

16 THE COURT: Okay that's fine.

17 MR. STEIN: Right and that gives us a time frame.

18 THE COURT: Right that's fine, you order it how  
19 you want to bring in your testimony. If you have want to  
20 bring it in later, then that's fine.

21 MR. STEIN: Well and let me -- since it's been  
22 such a long drawn out situation, let me remind the court  
23 where we are, Plaintiffs put on their case in chief, they  
24 claim that there are other pieces of it buff they put on  
25 most of it, we want to then put on our rebuttal to their  
26 case in chief and our defenses.

27 THE COURT: Well your defense case is what it is  
28 but yes.

1 MR. STEIN: Right. And so we are not yet there  
2 because she called me in her case in chief.

3 THE COURT: I understand.

4 MR. STEIN: As say 776 witness we have  
5 cross-examination and redirect. So after that's done then  
6 we have 23 days of trial testimony that I want to respond  
7 to pieces of and hopefully in an efficient fashion but I'm  
8 beginning to write that up and it could be you know.

9 THE COURT: It is what it is.

10 MR. STEIN: And then we have the experts and the  
11 case in chief.

12 THE COURT: Well once you're -- I don't know if  
13 she'll be done, you have to finish Margolis in order to  
14 close your case in chief.

15 MS. IBARRA: Right.

16 THE COURT: So after you're done with Mr. Stein  
17 then what is the -- who is the next witness, is it just --.

18 MS. IBARRA: So what the court has suggested  
19 before was the only live witnesses we were still going to  
20 have is finish Mr. Stein and then Mr. Margolis and we were  
21 going to do Ms. Aronson via declaration and Ms. Aronson  
22 could be called back for cross by them and she's part of my  
23 case, Ms. Aronson is a big part of my case so that getting  
24 her -- getting a declaration is not going to be a problem,  
25 getting her to come up for a cross going to be a little bit  
26 more difficult so that might -- that might mean that we  
27 start their case, we start redirect with -- or because  
28 Mr. Mills was also going to submit a declaration but

1 there's going to be a cross of Mr. Mills so we might do  
2 that and have her come later and if they want to do a cross  
3 with Ms. Barrett because she's also submitting a  
4 declaration.

5 THE COURT: Well I'm.

6 MS. IBARRA: Changing your minds about the  
7 declarations.

8 THE COURT: Yeah because it's guessing messy and  
9 I've willing to accept particularly on the quaint merit  
10 since we've called some of these witnesses so many times  
11 that's not a bad idea for that but in terms of the other  
12 witnesses I think we should just do them live and and --  
13 you know because I think credibility is important for the  
14 Court I think it's really important so you know I want to  
15 see these people so --.

16 MR. STEIN: And Mr. Mills I think the expert I  
17 think you'll find him really helpful in having the Court's  
18 own questions answered in other words when he hits a point  
19 that would otherwise be in a declaration had you might say  
20 well wait a second, what about this issue and he's right  
21 there, you can jump in.

22 THE COURT: Which I would do anyway during the  
23 cross. If he's here live I'm ask him whatever I want but I  
24 just think maybe we ought to stick to the live other than  
25 the quantum meruit because we've brought those witnesses so  
26 many times maybe we can reduce the amount of time we're  
27 here but let's just make everybody live. It's important  
28 for the Court, I'm changing my mind, okay not on you, this

1 one's on me.

2 MR. FORDYCE: It's the Court's prerogative.

3 THE COURT: It's a nice thought, I think because  
4 it's a court trial and because credibility issues are  
5 important, because I have questions that often come up  
6 during the testimony, just my own questions, I think we  
7 just have to do it here.

8 MS. IBARRA: And I'll just say we've all struggled  
9 about how best and most efficiently to bring in and  
10 organize the evidence.

11 THE COURT: Yeah it's a very Old case and I've  
12 stepped in year 10 or 11 so -- right? .

13 MS. IBARRA: And I was year seven or eight  
14 something.

15 MR. FORDYCE: And even I've been here for a couple  
16 years now. Yikes.

17 THE COURT: Buff still it has a history before we  
18 got here and we're all living with that.

19 MR. FORDYCE: True.

20 THE COURT: Okay well and the last thing is I have  
21 to leave a little bit -- I have a meeting I have to go to  
22 with the presiding judge so that is at 11:30 is I need to  
23 make anyway to that room where I'm meeting him shortly  
24 before 11:30 so let's just try to get what we can get done.

25 MR. FORDYCE: All right Your Honor we will do  
26 that.

27 THE COURT: All right. Mr. Stein is on the  
28 witness stand, you understand you're under oath.

1 A. Yes Your Honor.

2 THE COURT: And we'll just continue.

3 MR. FORDYCE: Yet.

4 Q. Mr. Stein we're going to pick back up with exhibit  
5 150 eight and just without rehashing everything I believe  
6 we laid foundation for that, exhibit 1508 is the conflict  
7 waiver from Ms. Barrett's law firm and sue mutt oh and beck  
8 [ET], do you have the document in front of you?

9 A. Yes.

10 THE COURT: I don't think that was received, that  
11 was the one that I said had a problem with nobody could  
12 say -- nobody yet has been able to say that it was signed.

13 MR. FORDYCE: Well Your Honor identify actually  
14 like to address that in my questioning to Mr. Stein.

15 THE COURT: Okay.

16 MR. FORDYCE: Because of course he's testified  
17 that he did in fact sign the document.

18 THE COURT: Yes, he did, but I'm talking about all  
19 the other signators.

20 MR. FORDYCE: Understood Your Honor.

21 THE COURT: But go ahead you can attempt.

22 Q. BY MR. FORDYCE: So Mr. Stein directly on point,  
23 if we go to the -- it's Page 4 in the upper left corner of  
24 the document, there's a signature block there that says  
25 Saint Monday development company, correct?

26 A. Yes.

27 Q. And you do recall signing this document,  
28 correct?

1 A. Yes.

2 Q. Okay. And let me ask you your understanding. If  
3 you signed this document at the time you signed it, was it  
4 your belief that the document was binding on SMDC?

5 A. Yes, SMDC had to waive the conflict and whether GT  
6 Tribe decided to waive the conflict makes no difference  
7 it's whether SMDC was making a knowing waiver and when we  
8 signed it we made that waiver.

9 Q. Was it your belief at the time -- or let me ask it  
10 this way, was there any ambiguity at the time that you  
11 signed this conflict waiver sometime around March 2006 as  
12 to whether SMDC had formed an attorney-client relationship  
13 with Ms. Barrett and her law firm?

14 A. Yes we had, we had an engagement letter and we  
15 signed this letter.

16 Q. So to be clear --.

17 THE COURT: Wait a minute there was an engagement  
18 letter, did we get that in evident.

19 MR. FORDYCE: I'm not sure we've seen.

20 MS. IBARRA: I don't think I've seen it.

21 THE COURT: Okay?

22 A. Your Honor the only reason this is important is to  
23 answer the allegations of Plaintiff.

24 THE COURT: I understand why you want it but we  
25 don't have an engagement letter we have a document that's  
26 unsigned and I don't think that because one party believe  
27 it's a waiver and binding on SMDC without the consent of  
28 the other party then I really can't accept it for the

1 truth, that is there is a waiver or that there's even a  
2 joint?

3 A. We're not offering it for the truth Your Honor.

4 MR. FORDYCE: Either one of us can make that  
5 explanation, it isn't being used for the truth, it goes to  
6 show that Mr. Stein relied on and believe there was an  
7 attorney-client relationship and there was a conflict  
8 waiver between SMDC and Ms. Barrett.

9 THE COURT: Yeah okay.

10 A. And that's why I could fire her.

11 MR. FORDYCE: It's a party admission.

12 THE COURT: Well there's a lot of foundational  
13 facts in there that haven't been proved.

14 MS. IBARRA: So objection as to lacks foundation  
15 about there being an engagement letter.

16 THE COURT: Objection sustained.

17 MR. FORDYCE: Well Your Honor can I ask Mr. Stein  
18 if he recalls an engagements letter.

19 THE COURT: Sure if he thinks he saw two.

20 MR. FORDYCE: For whatever it's worth.

21 THE COURT: Heck say he saw one?

22 A. Your Honor this is not a big enough point to spend  
23 time on.

24 THE COURT: All right.

25 MR. FORDYCE: Just for the record Mr. Stein had  
26 you saw an engagement letter with Ms. Barrett's firm.

27 A. Yes did I.

28 Q. And just to clarify your testimony, it's your

1 testimony there's an attorney-client relationship between  
2 SMDC and Ms. Barrett's firm?

3 A. Yes there was and that's why I felt I could fire  
4 her over the phone and later talked to Virginia Carmelo and  
5 Sam Dunlap about having the GT Tribe fire her before she  
6 sub -- before she carried through with her threat to kill  
7 the deal because she wasn't being paid an extra \$100,000  
8 beyond what she we had agreed.

9 Q. With your firing that you've just mentioned on  
10 whose behalf were you firing Ms. Barrett?

11 A. Just SMDC.

12 Q. Do you have any knowledge as to whether Ms.  
13 Barrett was still an attorney for the tribe after you fired  
14 her?

15 A. Yes she was.

16 Q. Okay. Let's look at a couple of clauses in the  
17 agreement for what they are -- for what value we can give  
18 them. I'd like to draw your attention to Page 3 of the  
19 agreement in Paragraph 6, pave graph six is titled payment  
20 of legal fees.

21 THE COURT: Well this isn't in evidence but if it  
22 helps him remember something you can do that but this is  
23 not in evidence any more so --.

24 MR. FORDYCE: Understood Your Honor but -- all  
25 right Mr. Stein either -- well does Your Honor object to  
26 reading the paragraph into the order.

27 THE COURT: Yes it's not in evidence.

28 MR. FORDYCE: All right.

1 THE COURT: It's not in evidence so 1508 is not  
2 received but if you want to ask him a question and the  
3 document helps him remember something, then he can use the  
4 document to refresh his recollection which by the way he  
5 can't read from it in refreshing recollection.

6 MR. FORDYCE: I mean not read out Mr. Stein can  
7 you read Paragraph 6 by yourself.

8 THE COURT: No. To himself.

9 MR. FORDYCE: Sorry Your Honor.

10 THE COURT: To himself, yes?

11 A. The court is already being liberal by not making  
12 my answer the question and fail to remember, so we should  
13 probably stop while we're ahead.

14 MR. FORDYCE: So Mr. Stein just take a moment to  
15 read that to yourself please.

16 A. Yes.

17 Q. I'll just ask you a few questions?

18 A. It refreshes my recollection.

19 Q. What was to your recollection the payment of legal  
20 fees arranged between Ms. Barrett and SMDC?

21 A. She actually put in this -- in this document.

22 THE COURT: No that's stricken you can't put  
23 anything about the document in evidence?

24 A. Forgive me I'll do my best.

25 THE COURT: The arrangement was?

26 A. The arrangement was that Ms. Barrett would be paid  
27 a regular fee and then a contingency fee on top of that so  
28 it's what you call a mixed rate and she actually put the

1 terms of the mixed rate for the fee agreement, she actually  
2 put it in the conflict waiver oddly enough.

3 THE COURT: Okay that's stricken why don't you  
4 give me the document and you can just ask him questions.  
5 Why don't you give me that document too, that the conflict  
6 waiver?

7 A. Uh-huh.

8 THE COURT: No that's not so you can use that one?

9 A. Yeah that's right.

10 MR. FORDYCE: What is he, I'm not clear what the  
11 witness has in front of him now.

12 THE COURT: No he can?

13 A. What a witness is supposed to have in front of him  
14 which is nothing.

15 MR. FORDYCE: Zeros that's fine.

16 Q. So Mr. Stein when you talk about this sort of  
17 mixed fee agreement, why was that important to SMDC or was  
18 it?

19 A. Because SMDC was concerned with keeping GT Tribe  
20 which it had -- it was contracted for on the investor  
21 budget, and if we didn't keep on the investor budget then  
22 we forfeited rights to further payments under the 21  
23 million dollars agreement, whoa breach the agreement and  
24 they have full discretion to give us any more money to  
25 begin with but then they absolutely would not give us any  
26 money because we didn't follow the budget with the first  
27 2.15 million.

28 Q. And as far as you recall at the time around March

1 2006 was that the arrangement that SMDC had with Ms.  
2 Barrett's firm?

3 A. Ms. Barrett because SMDC would be getting a draw  
4 from the initial 2.15 million, Ms. Barrett wanted SMDC  
5 under contract with her so that she could get her payment  
6 first and she also wanted to be the lawyer for the SMDC and  
7 for the tribe and so we -- and I found that agreeable.

8 MR. FORDYCE: Your Honor may Mr. Stein read  
9 Paragraph 8 to refresh his recollection.

10 THE COURT: He hasn't forgotten anything, you  
11 haven't asked him a question yet.

12 MR. FORDYCE: All right that's fine, that's a very  
13 good point I apologize.

14 THE COURT: And I don't know because Mr. Stein has  
15 been reading from the document when I told him not to so I  
16 may prohibit it, let's see if we can just maybe see if he  
17 has a recollection of his own.

18 MR. FORDYCE: Understood, understood Your Honor.

19 Q. Mr. Stein do you have any recollection --.

20 THE COURT: No just ask him a question, just ask  
21 your question, your substantive question.

22 MR. FORDYCE: Absolutely.

23 Q. Mr. Stein, were there particular individuals  
24 having authority as far as the agreement with Ms. Barrett's  
25 firm, was there -- were you the representative for SMDC  
26 with authority to advise --?

27 A. Which question do you want me to answer.

28 Q. Well was SMDC -- were you the representative for

1 SMDC as far as advice and instructions under the agreement  
2 agreement with Ms. Barrett's firm?

3 A. Yes.

4 Q. Do you have knowledge as to who played this whole  
5 for the tribe if anyone?

6 A. Sam Dunlap.

7 Q. Okay. And what was the importance of this  
8 arrangement for SMDC?

9 A. Well if -- Sam -- Marilyn Barrett needed to  
10 communicate with Sam Dunlap and myself on each issue. If  
11 we didn't have representatives then she would have to  
12 communicate with the entire tribal council and get their  
13 approval on each issue which is very hard in a fast moving  
14 negotiation which might have quite literally a thousand  
15 issues, there might be a thousand issues in the Libra  
16 agreement. So she had a conflict waiver that said okay Sam  
17 you're the GT Tribe representative and okay John you're the  
18 SMDC representative and that was put in the agreement which  
19 I signed.

20 Q. Okay. I think we can probably move off this  
21 agreement and what we're going to do is now go into some of  
22 the other documents on which plaintiff has relied to  
23 establish --.

24 THE COURT: You mean the retainer agreement that  
25 you signed, because if you're referring to this agreement  
26 which is 1508 it's stricken.

27 MR. FORDYCE: Pardon me can I have that read back  
28 please.

1 THE COURT: My comment or the testimony.

2 MR. FORDYCE: Yes.

3 THE COURT: I'm saying if Mr. Stein was contained  
4 in this agreement I signed h I'm assuming He's talking  
5 about the retainer agreement that he supposedly signed, if  
6 he's referring to what was previously identified as 1508  
7 that's stricken because that's the substance of it so it's  
8 unclear but I'm just making that --.

9 MR. FORDYCE: That's fine Your Honor sorry.

10 THE COURT: Yeah.

11 MR. FORDYCE: That's fine?

12 A. And my apologies, I don't want get what the court  
13 is doing so I'm struggling with it.

14 Q. BY MR. FORDYCE: So Mr. Stein let's go ahead and I  
15 apologize to everyone, this is going to take a little bit  
16 of bouncing around the exhibits. All right, let's see.  
17 Okay let's look at -- I'll see if I can do this in some  
18 sort of reasonably rational order even though this was not  
19 necessarily how Plaintiffs introduced. Mr. Stein can you  
20 grab Plaintiffs exhibit binder volume one. I would direct  
21 you to Exhibit 8 initially and I'm going to check with Your  
22 Honor that this has actually been identified or admitted.  
23 Aisle gist let everyone get to where they need to be.

24 MS. IBARRA: It was definitely identified I hope  
25 it was admitted.

26 MR. FORDYCE: I don't have this as admitted Your  
27 Honor.

28 THE COURT: No Neli doesn't either.

1 MR. FORDYCE: This was Exhibit 8 and it was  
2 identified adds part of Plaintiffs liability case on July  
3 7, 2016. Shall I question Mr. Stein on it and then seek  
4 Your Honor's permission to have it admitted or can we just  
5 admit it.

6 MS. IBARRA: It should have been admitted with Sam  
7 Dunlap because he received it and he gave testimony about  
8 it?

9 A. Well we don't want it admitted so the court -- we  
10 don't want it admitted so.

11 THE COURT: Yeah it was admitted but --.

12 MR. FORDYCE: Oh was it yeah.

13 THE COURT: Yeah I remember this document.

14 MS. IBARRA: It should have been admitted if it  
15 wasn't.

16 THE COURT: It was admitted in the first phase.

17 MS. IBARRA: Yeah in the real party in interest?

18 A. Do we have a record that was admit. I don't think  
19 we have a record that's all.

20 THE COURT: No it was received, if not let's go  
21 through it.

22 MS. IBARRA: We had extensive testimony from Sam,  
23 Mr. Dunlap.

24 THE COURT: Neli in the first trial. You don't  
25 have the first trial.

26 THE CLERK: No.

27 THE COURT: It's not admitted in the first trial  
28 or there was no testimony about it.

1 MS. IBARRA: There was a lot of testimony and it  
2 should have been --.

3 THE COURT: Mr. Stein to Dunlap stating prior  
4 invoice was sent in error?

5 A. May 26, 2000.

6 THE COURT: But it doesn't show it being enter but  
7 there was testimony about it so.

8 MS. IBARRA: It should have been.

9 MR. FORDYCE: Well I don't see it as admitted  
10 then.

11 MS. IBARRA: So it was my error that I didn't ask  
12 that it be admitted but it should have been admitted. But  
13 do you want to go with it now?

14 A. Your Honor.

15 THE COURT: Yes?

16 A. If I may ask a question, I don't want to -- if  
17 it's not admitted we don't want to put it into evidence.

18 THE COURT: You don't have to, you don't have to,  
19 I don't know if the other side wants it.

20 MS. IBARRA: I can come back and do redirect on  
21 it.

22 MR. FORDYCE: All right.

23 THE COURT: Okay so defense doesn't want to  
24 examine eight after all.

25 MS. IBARRA: Okay.

26 THE COURT: Irrelevant I recall this but it was  
27 quite extensive actually.

28 MR. FORDYCE: Well I do want to ask him about it.

1 MS. IBARRA: Well let's do it then, let's have it  
2 admitted and.

3 THE COURT: It has to be in evidence then?

4 A. What would serve the court's convenience for  
5 making the trial faster.

6 THE COURT: Well if he's going to ask about it it  
7 should be in the evidence but if he does want to ask about  
8 it?

9 A. Let's go ahead -- since it's the Court's  
10 convenience we'll go ahead and if you tell into evidence.

11 MR. FORDYCE: That being my thought this is part  
12 of Plaintiff's 7 '76 direct, all right, so Mr. Stein you've  
13 seen this exhibit before correct.

14 A. Yes I have.

15 Q. Please describe the exhibit?

16 A. This is a letter sent to Sam when he was a member  
17 of the Morales group.

18 Q. Please explain what is going on in this exhibit?

19 A. Sam had approached me to put together an idea  
20 which would be a casino project that had never been  
21 attempted by the Gabrielino tribe, she was a member of the  
22 Morales group, there was no such thing at GT Tribe the  
23 plaintiff in this litigation on May 26, 2000 t just didn't  
24 exhibit.

25 THE COURT: What --.

26 MR. FORDYCE: Oh sorry, Your Honor please.

27 THE COURT: I'm just wondering what do you mean it  
28 didn't exist, I mean it's been around for a very long time

1 I guess I'm confused. You mean as an LLC or --?

2 A. No the unincorporated association that's plaintiff  
3 of this case, remember we talked about standing and.

4 MS. IBARRA: Well objection as to -- you know the  
5 description of the entity --?

6 A. Well you go ahead then because we shouldn't both  
7 talk.

8 MS. IBARRA: No that was just my objection.

9 THE COURT: Objection overruled go ahead?

10 A. Once again I'm not testifying I'm trying to answer  
11 your question.

12 THE COURT: Oh you're answer any question.

13 A. Yeah. The unincorporated association as plaintiff  
14 in this case did not exist in 2000, Mr. Morales, the  
15 Morales group existed and continues to exist, once again  
16 you have a series of Five or six separate unincorporated  
17 associations all of whom are raising their hands saying  
18 we're the tribe and it this has been around for 11 years.

19 THE COURT: Well I bet it's been going on longer  
20 than that?

21 A. So what happened was the state recognition of the  
22 tribe was just a state recognition of the American Indian  
23 group, it just said we're not going to choose Monday the  
24 Five or six Uh-huh and the tribe is recognized so you have  
25 a bunch of association's raising their hand saying we want  
26 the tribe, we want the federal recognition, we want the  
27 casino. In 2000 the the group that's here today, the  
28 Plaintiffs group did not exist, it did not exist, like

1 apple corporation was not formed.

2 MS. IBARRA: Objection is this testimony?

3 A. Of Steve jobs --.

4 THE COURT: Well this is his attempt at  
5 explanation, I guess I'm not understanding the Gabrielinos  
6 have not been around have been around for a very long time?

7 A. They're not the plaintiff, they're not the  
8 plaintiff Your Honor.

9 THE COURT: Mr. Stein I don't want to argue with  
10 you, let's just move on with the testimony, okay? I'm  
11 striking the part that far they didn't exist.

12 MR. FORDYCE: So Mr. Stein.

13 THE COURT: Continue.

14 MR. FORDYCE: Oh sorry.

15 Q. What's the date on this document?

16 A. May 26, 2000.

17 Q. Was this before the SMDC agreement exhibit 569?

18 A. This is before the SMDC agreement, it was before  
19 SMDC existed and it was before the unincorporated  
20 association that's plaintiff in this case existed, this was  
21 address today Mr. Sam Dunlap on behalf of --.

22 THE COURT: Did I strike that or did I not strike  
23 that. It's stricken again?

24 A. I'm sorry.

25 THE COURT: You're not understanding?

26 A. And I have really want to cooperate I just don't  
27 get it.

28 THE COURT: Okay well testimony is stricken. Why

1 don't you start that all over again, that entire answer is  
2 stricken. State of the art over again.

3 MR. FORDYCE: You got it.

4 Q. Mr. Stein what's the date on this letter?

5 A. May 26 of 2000.

6 Q. What is the date on the SMDC agreement?

7 A. March of 2001.

8 Q. Is there anything in the SMDC agreement that  
9 included based on Exhibit 8?

10 A. Exhibit 8 was superseded by the SMDC agreement  
11 which states that it supersedes any prior agreements or  
12 understandings.

13 Q. Mr. Stein I'm sorry to do this jumping around  
14 books but I think probably it's a good idea to keep  
15 Defendants first volume with 569 out and available, if I  
16 can direct you to exhibit 569, defense 0492 Bates number  
17 and that's Paragraph 14, section 14.

18 MS. IBARRA: Page.

19 MR. FORDYCE: Oh 0492 Bates number, near the end.

20 Q. Mr. Stein do you see Paragraph 14 there?

21 A. Yes.

22 Q. And is this what you're referring to with anything  
23 that's in Exhibit A being superseded?

24 A. Yes. It says -- on March of 2001, it says this  
25 agreement contains the entire agreement of the parties  
26 related to this subject matter and the parties agree that  
27 this agreement supersedes all prior written or oral  
28 agreements, representations and warranties relating to the

1 subject matter hereof. And then it goes on to say no  
2 modifications shall be valid unless made in writing.

3 Q. So at the time of Exhibit 8 in May of 2000 was it  
4 your belief that you were the tribes attorney?

5 A. No. The plaintiff in this action didn't exist,  
6 Sam Dunlap was part of a different group, this is addressed  
7 to Sam Dunlap as part of a different group, the Morales  
8 group.

9 THE COURT: Okay.

10 MR. FORDYCE: He can't -- he can't say that.

11 THE COURT: Yeah. So let's start over again.

12 MR. FORDYCE: Okay?

13 A. Your Honor if you could just give me a word of  
14 explanation because I'm just dumfounded, I don't  
15 understand.

16 MR. FORDYCE: I'll try.

17 THE COURT: Just move on, okay because I'm not  
18 going to argue with you over it, I've made my ruling, okay?

19 A. Sure.

20 THE COURT: Let's move on because if we continue  
21 to do this I'm just going to ask him to step down.

22 MR. FORDYCE: Understood Your Honor.

23 THE COURT: So --.

24 Q. BY MR. FORDYCE: So Mr. Stein just to finish this  
25 line of questioning and just yes or no answer, is there any  
26 reason -- is it your understanding at the time of the SMDC  
27 agreement that anything contained in Exhibit 8 was  
28 superseded by the SMDC agreement, yes or no?

1           A.    Yes, it was superseded, everything.

2           Q.    Let's move to Exhibit 11 please in the same  
3 Plaintiffs binder, this is another exhibit relied on by  
4 Plaintiff's to establish an attorney relationship. Mr.  
5 Stein, same question, have you seen this document before?

6           A.    Yes I have.

7           Q.    Please briefly describe it?

8           A.    This was an explanation to Sam Dunlap who was part  
9 of the Morales group and it was an explanation the Morales  
10 group was very upset because they had gotten a letter from  
11 Richard Melanovich and they were considering a casino  
12 project with Mr. Stein or SMDC, it was very early  
13 discussions.

14                   THE COURT: Who is Melanovich again?

15           A.    Melanovich was head of the Agua Caliente tribe and  
16 he wrote a letter saying Mr. Stein said something about me  
17 and that he had represented my group. And what he had said  
18 was completely false and --.

19                   THE COURT: Wait a minute who said what was false?

20           A.    Mr. Melanovich said that I had made a claim that I  
21 had represented Agua Caliente.

22                   THE COURT: To the Morales group?

23           A.    To the Morales group that's exactly right, which  
24 Sam Dunlap was a member of the Morales tribal council and  
25 this is the same Morales group that was a member of the  
26 litigation so they were considering whether they wanted to  
27 work with me, and Rich Melanovich sent out a letter to  
28 everybody and some it got to the Morales people saying Mr.

1 Stein made false claims about representing him and this  
2 letter explained no, I represented the 29 Palms band of  
3 Mission Indians in a transaction where Donald Trump wanted  
4 to become the manager and in fact did become the manager  
5 despite my efforts to convince the tribe not to hire him.

6 Q. BY MR. FORDYCE: Mr. Stein as you sit here today  
7 do you have any belief that anything in Exhibit 11 made you  
8 the attorney for the plaintiff in this case?

9 A. No. I was not the attorney for the plaintiff in  
10 this case and I was not the attorney for Sam Dunlap and I  
11 was not the attorney for the Morales group that he was  
12 tribal council man of.

13 Q. And Mr. Stein just a yes or no answer, we looked  
14 at page 0492 and supersede --.

15 MS. IBARRA: And just to clarify Exhibit 11 is  
16 admitted since we talked about it.

17 MR. FORDYCE: Well I suppose because we have to  
18 review it.

19 THE COURT: All right it's received.

20 THE CLERK: 11.

21 MR. FORDYCE: Yes if we're going to refute it and  
22 it was used by Plaintiff I assume it's been admitted.

23 THE COURT: The wave it's been working unless I  
24 here an objection the document should be in or if I've  
25 otherwise made a ruling concerning it.

26 MR. FORDYCE: Understood Your Honor.

27 Q. And Mr. Stein just yes or no, pursuant to section  
28 14 of the SMDC agreement on page Bates 0492, is there any

1 reason at the time the SMDC agreement was entered into, did  
2 you believe that it superseded anything that's contained in  
3 Exhibit 11?

4 A. Yes.

5 Q. Let's move on to some other documents. Let me  
6 make sure they're all here before I start.

7 THE COURT: Well when you say supersede, you're  
8 talking about superseding the terms of the written  
9 contract. This is a letter, are you saying that there's  
10 something in in letter that they're contending changed the  
11 terms of the SMDC agreement.

12 MR. FORDYCE: Well Your Honor it's pretty simple.

13 THE COURT: I guess --.

14 MR. FORDYCE: They introduced those documents to  
15 say that Mr. Stein was the tribes attorney and we at least  
16 has a document that says anything that came before is  
17 superseded by this, so to the extent that Plaintiffs  
18 contend that anything in those documents creates an  
19 attorney-client relationship, anything? There is  
20 superseded by the SMDC agreement.

21 MS. IBARRA: Oh.

22 MR. FORDYCE: That's not our contention, it's  
23 refuting their contention?

24 A. Right, right.

25 MS. IBARRA: Well I think it was introduced in the  
26 real party in interest part and it was discussed by Sam.

27 THE COURT: I'm just -- I'm not saying it's not  
28 admitted all I'm saying is I don't understand how this is a

1 changing of the terms of the SMDC agreement but.

2 MS. IBARRA: Yeah.

3 MR. FORDYCE: That's what we're saying, it's a  
4 temporal issue, these documents came before the SMDC  
5 agreement.

6 THE COURT: Right.

7 MR. FORDYCE: The SMDC agreement explicitly states  
8 that anything that came before or superseded, it's not our  
9 position that Exhibit 8 and Exhibit 11 create an  
10 attorney-client relationship between Mr. Stein and the  
11 tribe it's quite the offense but the the wave it's put by  
12 Plaintiff's we're now in a position of refuting it and if  
13 nothing else the SMDC agreement later in time refutes those  
14 earlier documents to the extent they say it creates an  
15 attorney-client relationship?

16 A. Your Honor.

17 MS. IBARRA: The Melanovich issue came up for us  
18 to the real party in interest and their early contacts with  
19 Mr. Stein because it wasn't just Sam, I mean there was also  
20 Sam from -- was it Patty who was one of the signator he's  
21 to the SMDC agreement and what her understanding of Mr.  
22 Stein and from other people in other tribal communities and  
23 I don't think that we ever said that this was somehow  
24 superseded the SMDC agreement but it did create sort of an  
25 impression of who he was and what kind of relationship?

26 A. Are you withdrawing your claim that.

27 THE COURT: Mr. Stein let me.

28 MS. IBARRA: No.

1 THE COURT: Did you finish?

2 MS. IBARRA: Yes, it was part of how they  
3 understood who he was when they were meeting him and being  
4 introduce today him and being introduced to this agreement,  
5 this was their State of what they knew about him.

6 MR. FORDYCE: Your Honor I can't put it any more  
7 clearly than how I put it and Your Honor can make of it  
8 what you will, we didn't introduce eight and 11?

9 A. Your Honor if I may.

10 THE COURT: Okay?

11 A. And forgive me I'm kind of stuck in this dual  
12 role, the entire agreement phrase is not for the agreement,  
13 it's a standard phrase that every major contract has --.

14 THE COURT: We're talking about integration  
15 clauses is what we're talking about?

16 A. That's exactly right.

17 MS. IBARRA: Yes?

18 A. And what it says it's not just prior -- it says  
19 any prior or written oral agreements, representations,  
20 warranties, whatever they think was created by this is  
21 supersede the by the writing, that's why the integration  
22 clause is so important so that they can't come back later  
23 and make claims that there's an attorney-client  
24 relationship based on this because nine attorney-client  
25 rich says there's no attorney-client relationship, and it  
26 even says when Arter & Hadden was involved there was no  
27 attorney-client relationship involved, there's the  
28 stationary so this has to do with the subject matter of

1 this and that's why it says this agreement contains the  
2 entire agreement of the parties relating to this subject  
3 matter and the parts agree that this agreement supersedes  
4 all prior written or oral agreements relating to the  
5 subject matter here of. That and -- and it specifically  
6 mentions Arter & Hadden, these are letters from Arter &  
7 Hadden.

8 MS. IBARRA: So what the testimony we had --.

9 THE COURT: Wait a minute is he done are you done?

10 A. No, I'm not.

11 THE COURT: All right?

12 A. So what may be confusing the court is how  
13 illogical this is. They are claiming that while Mr. Dunlap  
14 was representing a competing faction of the tribe that  
15 somehow I created an attorney-client relationship with this  
16 faction of the tribe, totally different group, totally  
17 different people based on letters that are specifically  
18 superseded here written to Sam Dunlap when he's the head of  
19 this other faction and they're not suing me, the Morales  
20 group is not suing me.

21 MS. IBARRA: They already did, but --  
22 Melanovich -- so we didn't issue this document for  
23 Melanovich?

24 A. Forgive me, forgive me.

25 THE COURT: Wait a minute Mr. Stein?

26 A. The Morales sued me.

27 THE COURT: Mr. Stein?

28 A. You said the Morales group sued me, they never

1 sued me.

2 THE COURT: Mr. Stein, step down. Mr. Stein, step  
3 down. You have raised your voice one too many times you're  
4 not going to testify h you're putting your fingers, you're  
5 raising your voice, you're shouting over me, that's it.  
6 It's happened one too many times. Thank you. I'll come  
7 out in 10 minutes.

8 (Break taken.) 11:05 AM to 11:10 AM.

9 THE COURT: Gabrielino versus Stein, BC361307.  
10 It's 11 what 15, 11 10 and I have to be somewhere at 11:30  
11 so I'm going to adjourn for today but we should talk about  
12 what time on Monday you should return. I have want you to  
13 return at 9:30 a.m. and I want to discuss why the court  
14 should allow Mr. Stein to continue to testify, I want an  
15 explanation of why that should be allowed. So I assume  
16 you'll be prepared at 9:30 to address that.

17 MR. FORDYCE: Yes Your Honor we most certainly  
18 will.

19 MR. STEIN: And let me say on the record Your  
20 Honor my apologies for not heeding the Court's very  
21 specific instructions earlier, the court was correct, I was  
22 wrong, I'd like to apologize to the court and to the staff  
23 and I have apologize further, I would like to say a word --  
24 I was provoked by knowingly false stayed bayed by opposing  
25 counsel that said I was sued.

26 MR. FORDYCE: Jonathan.

27 MR. STEIN: Sued when I was not sued by Morales  
28 group and she specifically said to the court that I had

1 Morales group so my apologize into my apologize for the  
2 misstatement there is litigation between the Morales and  
3 which Mr. Stein was involved in, sorry about that for not  
4 being precise in my language, I should have been more  
5 precise.

6 THE COURT: All right. There you go. Okay. So  
7 9:30 let's talk about that and then in the event that I  
8 don't allow the testimony you should be prepared to move on  
9 to something else and have a witness available but if I  
10 allow it then have him ready to testify okay.

11 MR. FORDYCE: We certainly will thank you Your  
12 Honor.

13 THE COURT: All right I'll see you there then.  
14 11:12 AM.

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